Office-Supreme Court, U.S.
FILED
JAN 28 1983
ALEXANDER L. STEVAS,
CLERK

82-1299

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

CHARLES D. BRYDLE AND JOANN BRYDLE,

Petitioners,

vs.

STANLEY KALASUNAS AND GLORIA KALASUNAS

Respondents.

ON WRIT OF CERTIORARI
TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI
TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RALPH C. BUSS
BROWN, BUSS & JEFFRIES
Washington Square, Suite One
111 E. Washington Street
Post Office Box 120
Painesville, Ohio 44077
(216) 357-5577

Attorney for Petitioners

John E. Shoop
Prosecuting Atty., Lake Co.
Courthouse, P. O. Box 490
Painesville, OH 44077

QUESTIONS PRESENTED FOR REVIEW

1. May a Bankruptcy Court by Summary Judgment on the basis of collateral estoppel hold without a hearing a State Court Judgment based on fraud, nondischargeable under 11 U.S.C. §523(a)(2)(A) without examining the underlying merits when the evidence under State Law is different and does not require showing that a defendant knowingly made a misrepresentation and where the issue of actual or constructive fraud was not determined.

2. Where the evidence to establish fraud under 11 U.S.C. §523(a)(2)(A) and State Law is not the same and where the record does not reflect whether a State Court Judgment was rendered on the basis of actual or constructive fraud may a District Court deny a debtor the opportunity to present evidence on his behalf.

3. Does the Bankruptcy Act of 1978 place a debtor in a status inferior to a person accused of a crime and empower the Bankruptcy Court and the District Court sitting as a Court of Appeals the right to deny a debtor due process of law and a fair trial and thereby deprive the debtor of his entire assets simply on the basis of discretion.

4. The United States Sixth Circuit Court of Appeals erred and compounded the error of the District Court in affirming the District Court's decision where the District Court plainly admitted that the Bankruptcy Court committed serious error but nonetheless made a decision based on issues not subject of the appeal.

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

CHARLES D. BRYDLE AND JOANN BRYDLE,

Petitioners,

vs.

STANLEY KALASUNAS AND GLORIA KALASUNAS

Respondents.

ON WRIT OF CERTIORARI
TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI
TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RALPH C. BUSS
BROWN, BUSS & JEFFRIES
Washington Square, Suite One
111 E. Washington Street
Post Office Box 120
Painesville, Ohio 44077
(216) 357-5577

Attorney for Petitioners

I N D E X

	Page
Questions Presented For Review.....	1
Opinions Delivered Below.....	3
Jurisdiction.....	4
The Statutory Provisions Involved...	4
Statement Of The Case.....	5
Reasons For Allowance Of The Writ...	7
Conclusion.....	12

TABLE OF AUTHORITIES CITED

Cases:

Bullis vs. O'Beirne, 195 U.S. 606 (1904)..... 6

Davis-Paxon Co. vs. Caldwell, 115 F.2d 189 (1940) cert.denied. 313 U.S. 564..... 6

In re Harris, 458 Fed.Supp. 238 (1776) Affirmed. 587 F.2d 1370 (1975)..... 6

Page

Neil vs. Scruggs, 95 U.S. 704 (1878)..... 6

Nichols vs. Kohler Management Corp., 541 F.2d 64 (6th Circ. 1976) cert. denied. 429 U.S. 1074 (1977)..... 6

Statutes:

11 U.S.C. §523.

QUESTIONS PRESENTED FOR REVIEW

1. May a Bankruptcy Court by Summary Judgment on the basis of collateral estoppel hold without a hearing a State Court Judgment based on fraud, nondischargeable under 11 U.S.C. §523(a)(2)(A) without examining the underlying merits when the evidence under State Law is different and does not require showing that a defendant knowingly made a misrepresentation and where the issue of actual or constructive fraud was not determined.

2. Where the evidence to establish fraud under 11 U.S.C. §523(a)(2)(A) and State Law is not the same and where the record does not reflect whether a State Court Judgment was rendered on the basis of actual or constructive fraud may a District Court deny a debtor the opportunity to present evidence on his behalf.

3. Does the Bankruptcy Act of 1978 place a debtor in a status inferior to a person accused of a crime and empower the Bankruptcy Court and the District Court sitting as a Court of Appeals the right to deny a debtor due process of law and a fair trial and thereby deprive the debtor of his entire assets simply on the basis of discretion.

4. The United States Sixth Circuit Court of Appeals erred and compounded the error of the District Court in affirming the District Court's decision where the District Court plainly admitted that the Bankruptcy Court committed serious error but nonetheless made a decision based on issues not subject of the appeal.

OPINIONS DELIVERED BELOW

APPENDIX 1 is the Judgment of the State Court, the Ashtabula County Court Of Common Pleas entered on September 4, 1980.

APPENDIX 2 is the Judgment Entry of the United States Bankruptcy Court For the Northern District Of Ohio, Eastern Division entered on June 1, 1981.

APPENDIX 3 is the Memorandum Of Opinion of the United States District Court for the Northern District of Ohio, Eastern Division entered on August 27, 1981.

APPENDIX 4 is the Order of the Court of Appeals, Sixth Circuit, entered November 3, 1982.

APPENDIX 5 is the dissenting opinion of District Judge Neese, Court of Appeals for the Sixth Circuit entered December 13, 1982.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on November 3, 1982 (App. 6, infra).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

THE STATUTORY PROVISIONS INVOLVED

This action involves 11 U.S.C. §523(a)(2)(A). See App. 6, infra.

STATEMENT OF THE CASE

Originally this was an appeal from an adversary proceeding, with a summary disposition against the petitioners in the Bankruptcy Court under Chapter 7 of the Bankruptcy Code:

Petitioners, husband and wife, appealed to the Sixth Circuit Court of Appeals from a decision of the District Court which held that a State Court Judgment of Recission of a real estate transaction was not dischargeable under 11 U.S.C. §523(a)(2)(A).

The substance of the State Court Judgment was that $48,000.00 plus interest was to be returned by petitioners in exchange for their former residence. See Appendix I.

Petitioners were denied their day in court and incurred the most serious consequences simply on the basis of judicial discretion.

Even though 11 U.S.C. §523(a)(2)(A) required actual positive fraud, the District Court nonetheless after stating

that the State law does not require actual knowledgeable fraud and that fraud can be inferred, found "clearly" from the facts of the record that there was the requisite type of fraud, and affirmed the Bankruptcy Court's finding but for a different reason. The District Court found that the Bankruptcy Court in granting summary judgment had erred by applying the doctrine of collateral estoppel. The Sixth Circuit Court of Appeals concurred regarding the application of collateral estoppel but nevertheless affirmed the independent findings of the District Court.

In their appeal to the Sixth Circuit Court petitioners asserted that the District Court erred by not remanding the case to the Bankruptcy Court after it had found error and also assert that the factual findings of the Ohio State Court of Common Pleas did not and do not provide a sufficient basis to fall within the intent of 11 U.S.C. §523(a)(2)(A). There is every indica-

tion that the State Court Judgment under Federal Law amounts to constructive fraud and would have been dischargeable.

REASONS FOR ALLOWANCE OF THE WRIT

This petition raises questions concerning the power of the Bankruptcy Court to deprive ordinary citizens as opposed to business organizations of the opportunity for a fresh start which the Bankruptcy Code of 1978 supposedly granted them.

The deprivation of a person's assets after a Chapter 7 procedure without a hearing accords the debtor a status inferior to a person accused of a crime.

The propriety and extent of power accorded the Bankruptcy Court strictly by way of discretion denies a debtor his day in court and confiscates his property without any safeguards.

What is at issue is whether 11 U.S. C. §523(a)(2)(A) means what it states--

(a)(2)(A) applies to individuals who are subjected to a State court judgment of recission based on fraud.

Further, as indicated by the opinions of the various judges below the courts are in conflict as to what principles apply in allowing the Bankruptcy Court to use its discretion and what principles apply as to whether or not a debtor should be accorded a full and fair hearing.

This appeal is taken primarily because the limitless discretion of the Bankruptcy Court has resulted in a gross miscarriage of justice for these debtors.

The Sixth Circuit Court agreed with the District Court in a 2 to 1 decision (See Appendix 4 and 5 for the Opinion and Dissenting Opinion). This Court made legal conclusions that the Recission Judgment was nondischargeable on the basis of what pleadings it had before it and some selected facts even though stating that the Bankruptcy Court committed error but that the District

Court could correct this error. The Sixth Circuit Court of Appeals stated that the Bankruptcy Court has exclusive jurisdiction by virtue of the Bankruptcy Act yet it allowed the District Court to assume the Bankruptcy Court's role and make a decision outside of its jurisdiction. This Court again totally ignored the law of the State of Ohio which for a finding of fraud does not require active positive fraud.

Judge Neese in the Dissenting Opinion, see Appendix 5, agreed with Petitioners in stating that this matter could not be disposed without the benefit of a hearing. His opinion stated:

> "After concluding that the Bankruptcy Court had applied an erroneous standard in deciding the motion for a summary judgment, on appeal the District Court affirmed, upon its own finding from the judgment of the State Court the clear establishment therein of the elements necessary to find the debt to the Appellees nondischargeable; the District Court 'inferred' from the con-

duct of the Appellants 'a reckless disregard for the truth amounting to a willful misrepresentation' in the findings of the state court. I submit this was an improper manner in which to make summary disposition of the first appeal herein."

Judge Neese goes on to say:

"Actual fraud in-fact could not have been presumed by the District Court; 'one who bases a right or defense upon it should allege and prove it'. United States v. Colorado Anthracite Co., 225 U.S. 219, 226 (1912). Neither false representation nor actual fraud had been litigated before the Bankruptcy Court except to the extent of its interpretation of jury-findings in the state Court, and, for the same reasons which restricted the Bankruptcy Court in granting summary judgment, the District Court was not permitted to dispose of the first appeal herein summarily."

CONCLUSION

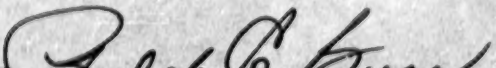
The decision of the Sixth Circuit Court is unduly harsh in its impact and contrary to the intent of 11 U.S.C. §523(a)(2)(A) not only because it is in conflict with the decisions of other Federal Courts, but because it denies, strictly on the basis of discretion, a debtor a hearing wherein to present a factual basis for his claim to discharge.

WHEREFORE, for the reasons set forth in this petition, a Writ of Certiorari should be granted.

Dated this 27th day of January, 1983.

Respectfully submitted,

BROWN, BUSS & JEFFRIES

By 
Ralph C. Buss
Attorney for Petitioners